

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Establish
Policies and Rules to Ensure Reliable, Long-Term
Supplies of Natural Gas to California.

Rulemaking 04-01-025
(Filed January 22, 2004)

**ASSIGNED COMMISSIONERS' RULING
RECLASSIFYING THE APRIL 1, 2005 MOTION AS A PETITION FOR
MODIFICATION OF DECISION 04-09-022**

Summary

Today's ruling reclassifies the April 1, 2005 motion filed by the Ratepayers for Affordable Clean Energy (RACE) as a petition for modification of Decision (D.) 04-09-022. The ruling also allows RACE and other interested parties an opportunity to file a supplemental response on whether or not the California Environmental Quality Act (CEQA) should apply to the Phase I issues addressed in D.04-09-022, as well as a reply to any supplemental responses that may be filed.

Background

To trace the origin of RACE's April 1, 2005 motion, a brief chronology of some of the relevant events is needed.

The Commission initiated this rulemaking on January 22, 2004. The rulemaking sought comments from the gas utilities and interested parties on the Phase I and Phase II issues. Phase I proposals were filed, and comments and reply comments were filed. In the Phase I scoping memo and ruling of June 18,

2004, the Assigned Commissioners ruled that no evidentiary hearings would be held on the Phase I issues.¹ In accordance with Rule 14.1 of the Commission's Rules of Practice and Procedure (Rules), a draft decision on the Phase I issues was prepared based upon a review of the Phase I proposals and the comments and reply comments. The Phase I draft decision was mailed for comment on July 20, 2004, and was on the Commission's August 19, 2004 agenda for consideration. (See D.04-09-022, pp. 7-9, 82.)

On August 18, 2004, the day before the Commission was scheduled to consider the Phase I draft decision, RACE submitted its motion, and for the first time, raised the issue of whether CEQA was applicable to Phase I of this proceeding. (See RACE's August 18, 2004 Motion for a Determination of Applicability of the California Environmental Quality Act To The Phase I Draft Decision.)

An alternate draft decision on the Phase I issues was issued for comment on August 19, 2004. The draft decision and the alternate draft decision were considered at the Commission's September 2, 2004 meeting. The Commission adopted the Phase I draft decision, D.04-09-022, on September 2, 2004.

On the following day, September 3, 2004, the Assigned Commissioners denied RACE's August 18, 2004 motion in a ruling which stated that "since there is no specific project being approved in the Phase I decision, CEQA does not apply at this juncture." (September 3, 2004 Assigned Commissioners' Ruling, p. 5.)

¹ RACE appealed the scoping memo's categorization of this proceeding as quasi-legislative. That appeal was denied in D.04-07-030.

On October 8, 2004, RACE filed a second motion to apply CEQA to the Phase I and Phase II decisions. RACE's motion sought a determination that CEQA applies to "the Phase I Decision, Phase II Draft Decision and the Rulemaking as [a] whole." (RACE October 8, 2004 Motion, p. 3.) This motion was denied in the February 28, 2005 scoping memo and ruling addressing the Phase II issues. In that scoping memo, we stated in part:

"For the reasons set forth in the September 3, 2004 ACR, and because Phase II of this proceeding does not involve the approval of any specific project, RACE's October 8, 2004 motion for a determination that CEQA applies to the Phase I decision, to a Phase II draft or proposed decision, or to this Rulemaking, is denied." (February 28, 2005 Scoping Memo, p. 14.)

On March 29, 2005, RACE submitted for filing an "Application for Rehearing of Phase II Scoping Memo and Ruling of the Assigned Commissioners Dated February 28, 2005." Since an application for rehearing can only be filed in connection with a Commission order or decision, the Commission's Docket Office, with the consent of RACE, renamed the document as a "Motion for Reconsideration of that portion of the Assigned Commissioner's Scoping Ruling dated February 28, 2005 that denied R.A.C.E.'s Motion for a Determination of the Applicability of C.E.Q.A" and filed it on April 1, 2005. (Pub. Util. Code § 1731; Rule 85.)

RACE's April 1, 2005 motion seeks to challenge the ruling reached in the February 28, 2005 scoping memo regarding the applicability of CEQA to the entire proceeding. No action has been taken yet on the April 1, 2005 motion.

On August 30, 2005, RACE filed a petition for writ of mandate in the California Supreme Court. RACE's petition requests that the Commission be directed to undertake an environmental review pursuant to CEQA.

Evidentiary hearings into the Phase II infrastructure adequacy and slack capacity issues were held on August 22, 2005 through September 1, 2005. A proposed decision regarding these issues is expected in the near future.

Reclassification of RACE's April 1, 2005 Motion

As described above, the decision on the Phase I issues was adopted on September 2, 2004 in D.04-09-022. As of today's ruling, no proposed decision on the Phase II infrastructure adequacy and slack capacity issues has been issued, and no decision on any of the Phase II issues has been adopted by the Commission.

Since the Commission adopted D.04-09-022 as the Phase I decision on September 2, 2004, it is appropriate to reclassify RACE's April 1, 2005 motion, as it pertains to the Phase I decision, as a petition for modification of D.04-09-022. This reclassification will allow the full Commission to address RACE's contention of whether CEQA should apply to the Phase I decision. By reclassifying RACE's pleading in this manner, a decision can be issued on the applicability of CEQA to the Phase I decision, independent of any determination by the full Commission of whether CEQA should apply to the Phase II issues.

In accordance with Rules 47 and 63 of the Commission's Rules, the Docket Office is directed to reclassify RACE's April 1, 2005 motion to reconsider the February 28, 2005 Phase II scoping memo as a petition for modification of D.04-09-022. Since no draft or proposed decisions have been issued yet on the Phase II issues, to the extent that RACE's motion seeks to apply CEQA to the

Phase II issues, such a request will be addressed in the Phase II decisions or rulings related to the Phase II issues.

RACE and other interested parties will be permitted to file a supplemental response to the reclassified petition for modification of D.04-09-022. The supplemental response may include additional arguments as to why CEQA should or should not apply to D.04-09-022. Parties who want to file a supplemental response shall file it with the Docket Office on or before November 14, 2005. The supplemental response shall also be electronically served on the service list to this proceeding. Parties may also file a reply to any supplemental response that may be filed. The reply to any supplemental response shall be filed and served on or before November 30, 2005.

Following the filing of any supplemental responses and replies, it is our intent to draft a decision for the Commission's action on whether or not D.04-09-022 should be modified as recommended by RACE in the reclassified April 1, 2005 petition for modification of D.04-09-022.

Therefore, **IT IS RULED** that:

1. The Docket Office is directed to reclassify the Ratepayers for Affordable Clean Energy's (RACE) April 1, 2005 "Motion for Reconsideration of that portion of the Assigned Commissioner's Scoping Ruling dated February 28, 2005 that denied R.A.C.E.'s Motion for a Determination of the Applicability of C.E.Q.A." as a "Petition for Modification of Decision 04-09-022" (Petition for Modification).

- a. The filing date for RACE's reclassified Petition for Modification shall remain as April 1, 2005.
- b. RACE and interested parties may file a supplemental response regarding any additional arguments about whether the California Environmental Quality Act (CEQA) should apply to the issues addressed in the Phase I decision, Decision 04-09-022.

The supplemental responses shall be filed with the Docket Office on or before November 14, 2005, and electronically served on the service list.

- c. RACE and interested parties may also file a reply to any supplemental response that may be filed. The replies shall be filed with the Docket Office on or before November 30, 2005, and electronically served on the service list.

2. To the extent that RACE's reclassified April 1, 2005 Petition for Modification seeks to apply CEQA to any of the Phase II issues, those CEQA issues will be addressed in the Phase II decisions or rulings.

Dated October 18, 2005, at San Francisco, California.

/s/ MICHAEL R. PEEVEY
Michael R. Peevey
Assigned Commissioner

/s/ SUSAN P. KENNEDY
Susan P. Kennedy
Assigned Commissioner

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioners' Ruling Reclassifying the April 1, 2005 Motion as a Petition for Modification of Decision 04-09-022 on all parties of record in this proceeding or their attorneys of record.

Dated October 18, 2005, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.